

RETURN TO:
Water Resources Analyst
Water Resources Department
CITY OF SCOTTSDALE
9388 E. San Salvador Dr.
Scottsdale, Arizona 85258

**FINANCIAL OBLIGATION AGREEMENT FOR PAYMENT OF
WATER, SEWER AND WATER RESOURCES
DEVELOPMENT FEES AND PENALTIES**

THIS AGREEMENT ("Agreement") is signed as of this _____ day of _____, 200____ by and between the City of Scottsdale ("the City"), and the _____ developer of the real property described herein, (the "Developer"). The Developer and the City are referred to collectively in this Agreement as the "Parties," and individually as "Party." This Agreement is entered into pursuant to City of Scottsdale Revised Code Chapter 49.

RECITALS

- A. WHEREAS, the City has enacted water, sewer, and water resources development fees (the "Fees") to enable it to meet the need for water and sewer infrastructure, supply, treatment and delivery; and
- B. WHEREAS, the City enacted the Fees pursuant to its authority under Arizona Revised Statutes Sections 9-500.05 and 9-463.05; and
- C. WHEREAS, the Property will benefit from the facilities and water supply that the City provides from the development fees it collects; and the Developer wishes to utilize the facilities and water supply that the City provides to the community with the development fees it collects.

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth herein, and for good and valuable consideration, the Parties agree as follows.

AGREEMENT

1. Property Benefited. The Developer is in possessory control of approximately _____ acres of real property located in Maricopa County, Arizona, ("the Property"), the legal description of which is attached to this Agreement as Exhibit A, and by reference made a part hereof. The Assessor's Parcel No. is _____, and the street address for the Property is _____, Scottsdale, Arizona _____. The Property's location is illustrated on the map, attached as Exhibit B. If the Developer is a person or entity different from that of the Owner of the Property, the Owner must sign the consent set forth at the end of this Agreement.

2. Developer's Knowledge. The Developer is charged with full knowledge of, and compliance with, Scottsdale Revised Code Chapter 49, as amended (the City's Water and Sewer Code). The Developer acknowledges that payment of the Fees is a condition precedent to the receipt of water and sewer services.
3. Water and Sewer Need Report. The Developer has submitted a Water and Sewer Need Report to the City that estimates the annual water and sewer need for the Property, and is attached as Exhibit C. The Developer warrants that the estimate was made in good faith. The Developer agrees to pay additional development fees and applicable penalties for any additional water and/or sewer usage that exceeds the estimated water, sewer and/or water resources needs that is set forth in Exhibit C, the Water and Sewer Need Report.
4. Penalties for Excessive Use. The City will monitor the Developer's water and sewer usage for a minimum three-year (3) period beginning on the date the certificate of occupancy is issued. (Per City Code, the City may elect to extend the monitoring of Developer's water and sewer usage beyond the minimum three-year period.) If the amount of average annual water, sewer, and/or water resources usage exceeds the projected water and sewer need stated in the Developer's Water and Sewer Need Report (Exhibit C) by twenty (20) percent or more, the City shall assess a penalty against the Developer.

The penalty shall be the sum of:

- (a) The Fee for the difference between the estimated water and sewer need and the actual water and/or sewer usage;
- (b) Interest at a rate of ten (10) percent per year on the difference; and
- (c) Twenty (20) percent of the difference.

The fee structure that is effective at the time that penalties are assessed shall apply.

5. Developer's Voluntary Disclosure of Excessive Use. If, for any reason, water, sewer, and/or water resources usage exceeds the Developer's estimated water and sewer need by twenty (20) percent or more, then the Developer may, at any time within the initial three-year monitoring period, avoid or reduce penalties by amending the original Water and Sewer Need Report and paying past due development fees and penalties. If the City accepts the amended report, then the Developer must pay additional Fees equaling the Fees applicable to the difference between the original and the amended water and sewer need. The fee structure that is effective at the time of submittal of the amended report shall apply. If the amended report is submitted within the first twelve (12) months of the monitoring period, the Developer shall pay only the difference between the Fees. If the amended report is submitted within thirteen (13) to twenty-four (24) months of the monitoring period, the Developer shall pay the difference between the Fees plus an additional ten (10) percent of the difference. If the amended report is submitted within twenty-five (25) to thirty-six (36) months of the monitoring period, the Developer shall pay the difference between the Fees plus an additional fifteen (15) percent of the difference.

6. Standards for Potable Water Not Returned to Sewers. The Parties agree that for some water uses, not all the potable water used on the property is discharged to the City's sewer system. Unless a mutually agreed upon exception is incorporated as a separate Exhibit to this Agreement, and in order to calculate the actual amount of water being discharged to the City's sewer system, the Developer and the City agree to utilize the following engineering standards to determine the quantity of potable water that does **not** return to the City's sewer system.

<u>Type of Usage</u>		<u>Standard Determination of Non-Sewer Water Use</u>
Pools & Fountains	52.37	Gallons/year/sq. ft. of water feature
Turf Landscaping	36.65	Gallons/year/sq. ft. of landscaped area
Plants & Trees	21.90	Gallons/year/sq/ ft of landscaped area
Cooling Towers	2.19	Gallons/year/cu. ft. of area cooled
Evaporative Coolers	1.08	Gallons/year/cu. ft. of area cooled
Misting Systems	1.08	Gallons/year/cu. ft. of area cooled
Car Washes	15%	Gallons/year/domestic metered account
Wash Down Areas	15%	Gallons/year/domestic metered account

7. Remedies. If the Developer fails to pay applicable Fees in accordance with Scottsdale Revised Code Chapter 49, as amended, the City may pursue any and all remedies available to it at law or in equity including, without limitation: (a) recordation and foreclosure of liens on the Property and (b) filing a civil suit for damages. The Developer agrees and understands that an additional remedy may be the immediate termination of water and/or sewer service to the Property as the City may so elect.
8. Incorporation. All recitals and appendices contained in this Agreement are hereby incorporated by this reference and made an integral part of this Agreement.
9. Governing Law. This Agreement shall be governed, construed and controlled according to the laws of the State of Arizona.
10. Waiver. No delay or failure to exercise any right or remedy on the part of the City shall constitute a waiver thereof, and no waiver by the Parties of the breach of any provision of this Agreement shall be construed as a waiver of any other provision.
11. Severability. The terms and conditions of this Agreement are severable. If for any reason, any court of law or administrative agency should deem any provision hereof invalid or inoperative, the remaining provisions of this Agreement shall remain valid and in full force and effect.
12. Legal Fees, Costs and Expenses. In the event either Party brings any action for any relief, declaratory or otherwise, arising out of this Agreement, the prevailing Party shall be entitled to reasonable attorneys fees, costs and expenses, as determined by the court, and which shall be deemed to have accrued on the commencement of such action. This provision shall be enforceable whether or not such action is prosecuted to judgment.
13. No Partnership. It is not intended by this Agreement that anything contained in it shall create any partnership, joint venture or agency relationship between the City and the Developer.

14. No Third Party Beneficiaries. No term or provision of this Agreement shall benefit any third person, including the Developer, or any other firm, organization, or corporation not a Party hereto, and no such person, firm, organization, or corporation shall have any right or cause of action hereunder.
15. Entire Agreement. This Agreement constitutes the entire Agreement of the Parties. No representations, Agreements or understandings, oral or written, other than this Agreement shall vary its terms.
16. Counterparts. This Agreement may be executed in one or more counterparts, and each originally executed duplicate counterpart of this Agreement shall be deemed to possess the full force and effect of the original.
17. Captions. The captions used in this Agreement are solely for the convenience of the Parties, and do not constitute a part of this Agreement and are not to be used to construe or interpret this Agreement.
18. Conflict of Interest. Pursuant to the provisions of A.R.S. Section 38-511, the City may cancel this Agreement, without fee reduction or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the City is at any time while the Agreement or any extension thereof is in effect an employee or agent of any other Party to the Agreement in any capacity or a consultant to any other part of the Agreement with respect to the subject matter of the Agreement. The City and the Developer are unaware of any such conflict as of the date of the execution of this Agreement.
19. Authority. Each Party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each has been properly authorized and empowered to enter this Agreement. Each Party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.
20. Assignment. Neither Party may assign or delegate the rights or obligations of this Agreement except with the written consent of the other Party.
21. Regulatory Compliance. The Developer agrees to comply with all applicable City ordinances and state and federal laws and regulations.
22. Time of the Essence. Time is of the essence of this Agreement.
23. Effective Date of Agreement. The effective date of this Agreement shall be the date of issuance of a building permit. The City shall record this Agreement within ten (10) days after the effective date of this Agreement.
24. Running of Benefits and Burdens. All provisions of this Agreement, including the benefits and burdens, run with the land and are binding upon and shall inure to the benefit of the heirs, personal representatives, successors and assigns of the Parties hereto.

25. Required Documents for LLC or LLP. If the owner is a limited liability company (LLC), it must provide to the City a copy of its Articles of Organization showing the filing date with the Arizona Corporation Commission (or other filing authority in the State of origin) and its Operating Agreement or, if a limited liability partnership (LLP), a copy of its Statement of Qualification showing the filing date with the Arizona Secretary of State (or other filing authority in the State of origin) and a copy of its Partnership Agreement, before the City will accept this Agreement. If this Agreement is signed on behalf of an LLC or an LLP, the person signing hereby personally warrants and represents to the City that he/she has authority to sign and bind the LLC or LLP to the terms of this Agreement.
26. Notice. Any notice required to be given pursuant to the provisions of this Agreement shall be given in writing and shall be deemed received when delivered in person or deposited in the United States mail, postage pre-paid, registered or certified mail, return receipt requested, and properly addressed, at the following addresses:

If to the City:

Michael J. Mahoney, W/R Analyst
City of Scottsdale Water Resources
9388 E. San Salvador Drive
Scottsdale, AZ 85258

If to the Developer (Property Owner):

Name: _____
 Company: _____
 Address: _____
 City, State: _____

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

 (DEVELOPER / PROPERTY OWNER)

BY: _____

Its: _____

STATE OF ARIZONA)
) SS.
 COUNTY OF MARICOPA)

SUBSCRIBED AND SWORN TO before me this _____ day of _____,
 200_____, by _____, authorized representative for
 _____.

 Notary Public

My Commission Expires:

Consent of Owner. If the Owner of the Property described in Exhibit A is a person or entity different from that of the Developer, the Owner hereby acknowledges he/she/it has read this Agreement, understands the consequences thereof, and agrees that should the Developer default under the terms of this Agreement, the City may impose a lien, with its possible consequences, on the Property described in Exhibit A to assist the City in recovering the required water, sewer and/or water resources development fees. The Owner agrees and understands that an additional remedy may be the immediate termination of water and/or sewer service to the Property as the City may so elect.

OWNER

Date: _____

By: _____

Its: _____

By: _____

Its: _____

STATE OF ARIZONA)
)ss.
County of Maricopa)

SUBSCRIBED AND SWORN to before me this ____ day of _____, 200____,
by _____, authorized representative for
_____.

Notary Public

My Commission Expires:

(If the Developer/Owner is a corporation, it must provide a signed and sealed corporate resolution showing the authority of the signer so to sign; if a limited liability company, a copy of its Operating Agreement showing the authority of the Manager(s) so to sign.)

CITY OF SCOTTSDALE,
an Arizona municipal corporation

By: _____

Water Resources
General Manager